



ZONING BOARD OF ADJUSTMENT

Draft Minutes

June 23, 2020 - 7:30 pm @ Community Development Department

Physical Location: 3 North Lowell Road (Community Development Department)

Live Broadcast: WCTV Channel 20 – Local Cable TV

Live Stream: <http://www.wctv21.com/>

Attendance:

Chairman Mike Scholz- present

Vice Chair Bruce Breton-present (at Community Development)

Pam Skinner, Secretary- present

Neelima Gogumalla, regular member- present (at Community Development)

Nick Shea, regular member- present

Betty Dunn, alternate- present

Kevin Hughes, alternate- excused

(Meeting attendance was taken by roll call vote and each member indicated they were either alone in the room or present at Community Development)

Staff:

Brian Arsenault, ZBA Administrator/Code Enforcement

Anitra Brodeur, minute taker

Call to Order

Chairman Scholz read the following statement:

*“As Chair of the ZBA, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that **all votes** that are taken during this meeting shall be done by **roll call vote only**.*

Let’s start the meeting by taking roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.”

Public Hearing

Case #13-2020: Parcel 21-K-18

Applicant – Marisa (Deluca) Wyszomirski

Owner – Marisa (Deluca) Wyszomirski

Location – 82 Turtle Rock Road

**Zoning District - Residential A District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)**

Application to Appeal an Administrative Decision – The issuance of WPOD Minor Application, Permit #05-2020, Dated April 28, 2020. Appealing notice of alleged violations of Section 616 Cobbett’s Pond and Canobie Lake Watershed Protection Overlay District (WPOD).

Ms. Skinner read the case, the list of abutters, and the letter of authorization into the record.

Attorney John Cronin addressed the Board via Zoom. Attorney Cronin stated that an Appeal of Administrative Decision is very rare. 80 and 82 Turtle Rock Road share a boundary. Attorney Cronin stated that there was work done on Turtle Rock Road with a state permit but not a local permit for the work. Ultimately, there was water that was directed onto the property of the applicant. Attorney Cronin read an email from Mr. Rex Norman to Mr. Steve Keach asking about the building of a berm and several other questions; these questions were not specific to the case at that time. Mr. Keach cited Section 616.4 which listed “land disturbing activity” as an activity that is considered development. Attorney Cronin stated that the berm flows onto the property of the applicant. Attorney Cronin read an email from Mr. Jay Broady who responded to Attorney Cronin’s email regarding the design of the drainage ditch. Mr. Derek Monson was also indicated as a person with whom the person who did this development consulted with, yet, Mr. Monson did not have any connection to the project.

Additionally, Attorney Cronin consulted with Mr. Jim Gove who went to the site to survey the work that had been done on the site. Attorney Cronin then reviewed the work done near the site and the multiple assessments of the property to review the flow of water onto the property. Attorney Cronin explained in the letter that the flow of water was resulting in depositing sediments onto the property. “Appropriate protective practices” was also a phrase used by Attorney Cronin mentioned in the letter by Mr. Gove. Mr. Shayne Gendron also write a letter to indicate sediment on the property of the applicant for this appeal.

Attorney Cronin is asking the Board to vacate the permit that was issued. Attorney Cronin is also asking for that ruling to be without prejudice so that the home owner can do the work with the proper permitting.

Vice Chair Breton asked about the letter from Mr. Keach to Mr. Norman on August 13, 2019. Attorney Cronin stated that the letter from Mr. Keach stated that the work was considered development and this would need to be a major site plan application. Attorney Cronin then read another section of the letter for Vice Chair Breton’s clarification which also reflected on the proper permitting of work done in municipalities in general.

Ms. Dunn asked what the appeal is, exactly. Attorney Cronin stated that the only action that can be taken is an action on the permit that is issued. Hence, Attorney Cronin is asking for the ZBA to vacate the permit. Ms. Dunn asked if the posting should have been posted with the number 80 Turtle Rock Road rather than 82 Turtle Rock Road.

In response, Mr. Arsenault stated that he worked with the applicant on the first page of the appeal application. The applicant is appealing the administrative decision. Mr. Arsenault stated that the letter from Mr. Gendron stating that this is a partial berm is an accurate statement. Mr. Arsenault stated that he was shown a permit from the applicant which was acquired at the state

level. Mr. Arsenault stated that the work is shedding onto 82 Turtle Rock Road because it is not complete and it is still “shedding”. Chairman Scholz asked Mr. Arsenault to discuss the town vote mentioned earlier regarding site plan applications. Mr. Arsenault stated that he did not wish to mislead anyone on that. Attorney Cronin stated it was Section 616.4. Mr. Arsenault stated the resident of 80 Turtle Road waited to complete the work once it appeared as if the requirements would lessen at the town level once that vote potentially passed.

Ms. Gogumalla asked that if the berm is completed, would there be any water running off onto the applicant’s property. Mr. Arsenault stated that the applicant did not have the authority to execute the work that is in this sketch. Ms. Gogumalla asked why it would be an issue if they allowed the work to continue for the state permit. Attorney Cronin stated that the appropriate engineering is essential, especially on Cobbetts Pond or other watershed areas.

The Board discussed the hand drawn plan dated 6-28-2019. Mr. Arsenault stated that there is a culvert on this hand drawn map. Ms. Dunn stated that the appeal is to the fact that Mr. Arsenault approved this permit. Mr. Arsenault stated that a stop work order was issued because of the change from major to minor site plan application.

Ms. Gogumalla asked about the hand drawing contained in the public packet and asked if it was done by an engineer; Attorney Cronin did not believe so. Attorney Cronin further stated that it is wrong to direct the flow of water onto the property of someone else. Further, Attorney Cronin stated that New Hampshire is a notice state, meaning that interested parties are informed in writing. The culvert that has been long existing shows the natural flow of water in the area. Vice Chair Breton stated that he has never seen a drainage plan that looks like the one before the Board with no engineering stamp. Vice Chair Breton believes this is a major site plan. Vice Chair Breton stated he believes the applicant of the plan, not the appeal, was misdirected. Attorney Cronin stated that the plan turns and directs the water right into the property of the applicant. Chairman Scholz asked if the plan was complete, would it not be directed onto the property of the applicant. Attorney Cronin stated that on the plan, the water is directed into the property of 82 Turtle Rock Road.

According to Attorney Cronin, a PBN is used in the application process at the state level, it is done for small fills, jet ski racks and several other small and expedited projects. Mr. Shea asked what should have been the next step. Attorney Cronin listed the many steps the applicant should have gone through in order to complete permitted work.

Ms. Gogumalla stated that the state issues the permit and who does the over site. Attorney Cronin stated that it is a manner of local enforcement.

Mr. Arsenault stated that the work should be done as permitted and no water should be shed on the property of the applicant. Vice Chair Breton stated that there were emails sent between town administrators indicating that this is a local issue, not a state permit issue. Chairman Scholz asked for clarity on the minor watershed application. Chairman Scholz stated that he is not sure if he has sufficient information yet to see if there was proper information to see if this fits the criteria of the application.

Chairman Scholz asked about the impervious surface and where that could be found on the application. Mr. Arsenault is not sure about that. The PBN has the impervious information according to Ms. Gogumalla. According to the reading of the application for a shoreland permit, it does need the total square footage and the total impervious surface.

Ms. Skinner read the letter from the Conservation Commission into the record. Ms. Dunn asked if the correct abutters were notified as there may be an error in the posting and it is not the fault of the applicant.

There was a discussion as to whether or not the application was properly noticed depending on if it was 80 or 82 Turtle rock Road. Chairman Scholz checked the notice to see if all abutters have been notified; he is satisfied that they were, yet, he understands Ms. Dunn's concerns but he will leave it up to the rest of the Board.

Attorney Cronin contends that the plan shows the intent to put water onto the property; there is no other intent.

The Chairman opened discussion up to the public at 9:14pm. There was no one.

Ms. Gogumalla asked if there was a middle ground that Attorney Cronin was willing to concede to. Attorney Cronin stated that if there was a plan that showed no impact to the owner's property, they would be willing to make concessions.

Vice Chair Breton asked Attorney Cronin to state Mr. Keach's qualifications. Attorney Cronin stated that Mr. Keach is a civil engineer that has worked in the field for over 30 years.

Mr. Shea asked where the water was initially going before this plan began. Attorney Cronin stated that prior to this, there was a different culvert and there was no water flowing onto the applicant's property from the neighbor, only from the road.

A motion was made by Vice Chair Breton to enter Deliberative session for Case #13-2020 at 9:20pm. Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, Mr. Shea, and Chairman Scholz- yes. Vote 5-0. Motion passes.

The Board clarified that they are voting on whether or not to grant the appeal. Chairman Scholz read the language that indicated that a potential contamination of a watershed should result in the need for a major watershed application. The Board discussed if this met the level of the major site plan application. If the Board believes there is a major site plan required, the Board discussed if it might develop language around that in the motion for the case. Chairman Scholz stated that the total surface and impervious surface is not known, then no one could know that about the application as it is not indicated on the plan.

After further review of the plan, Chairman Scholz cited Section 616.6.3. and Section 616.1.2 which both speak to an increase in impervious surface on a site plan. If there is 2,500 square feet of impervious surface, the next question is whether or not this is 20% of the entire lot. There is no evidence for below or above 20% nor is the amount of impervious surface known. Chairman

Scholz stated that 2,500 square feet is the limit of pre-existing impervious surface for a minor site plan but it is not known if it is 20% of the entire lot, how can a minor site plan application have been granted if this is not known. Ms. Gogumalla would like to continue the case to get information about the lot and the percentage of impervious area. The question is whether or not it exceeds 20%. Chairman Scholz stated he believes the permit was granted incorrectly.

Ms. Gogumalla would like to vote to continue the application to get clarity.

Vice Chair Breton discussed the emails between town administrators and stated he does believe he has all the information he needs. Ms Gogumalla was in the application for 80 Turtle Rock Road for the Minor Site Plan and she would like to know what else is in that file. Chairman Scholz stated that there is no spill control plan on the plan either. Chairman Scholz stated that he is fine continuing the case. Vice Chair Breton believes he has all the information he needs to make a decision including the opinion of town officials regarding the original work and site plan application. Ms. Gogumalla would like to make sure the Board has all the information from the site plan and would like to continue the case.

A motion was made by Ms. Gogumalla to continue Case #13-2020: Parcel 21-K-18 to July 14th, 2020. Seconded by Ms. Skinner. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea- no. Chairman Scholz and Ms. Gogumalla- yes- Vote 3-2. Motion fails.

A motion was made by Mr. Shea to grant the appeal of administrative decision for Case #13-2020: Parcel 21-K-18 as written. Seconded by Vice Chair Breton. Roll call vote:

Breton- yes

Skinner- yes

Shea- yes

Scholz- yes, reasons are in the record

Gogumalla- no, would like to have more information for the application which prompted to make the decision that was made

Vote 4-1. Motion passes.

The Chair advised 30 day appeal period.

Case #14-2020: Parcel 17-L-140

Applicant - Benchmark Engineering, Inc.

Owner – MacThompson Realty, LLC.

Location – 23 Sawyer Road

**Zoning District - Rural District and Cobbetts Pond & Canobie Lake
Watershed Protection Overlay District (WPOD)**

Variance Relief is requested from **Section(s) 702 & Appendix A-1**, to allow construction of a single-family dwelling and detached barn on a lot with 0' of frontage on a town road. Specifically, from **Sec. 702 & Appendix A-1** to allow 900'+/- of frontage on a private road (Sawyer Road) where 175' is required on a public road.

Ms. Skinner read the case, the list of abutters, and the letter of authorization into the record. Mr.

Maynard stated that the Board granted this relief at the last hearing. Mr. Maynard stated that there are two changes to the plan. The house became a little bit larger and the barn became a little bit smaller. The impervious coverage is about the same. The property is undeveloped and its only access is Sawyer Road at present.

The lot needed to go to the state level for an Alteration of Terrain Permit since the lot was both logged and stumped and the stumping prompted the AOT permit. The overall coverage of the lot including Sawyer Road is 11%. The variances were granted in September 24, 2019. The biggest change is the configuration of both the house and the barn. The barn is 600 square feet smaller. The house is 400 square feet larger but it is over the paved area. There is extra space in impervious coverage and that is 12.4% from 11.8%. The applicant has gone up by about 400 square feet.

Mr. Maynard reviewed the variance criteria contained in the public packet.

Ms. Dunn asked if the road placement has already occurred. Mr. Maynard stated that it was part of the AOT as well as the Shoreland Protection Permit.

Ms. Skinner read the comments from the Conservation Commission. The Board has concerns around the future use of the barn for animals. Ms. Dunn asked Mr. Maynard to confirm that the barn would not be used for animals; he believes it is for vehicles. Mr. Maynard stated there is no living space proposed in the barn.

Mr. Broady called into Community Development. Chairman Scholz stated that the previous case has been decided and the next step would be to call into Community Development to talk to staff tomorrow.

A motion was made by Vice Chair Breton to go into Deliberative session for Case #14-2020. Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Ms. Gogumalla, Chairman Scholz, Mr. Shea- yes. Vote 5-0. Motion passes.

Chairman Scholz reviewed the 5 variance criteria. The animals are a non-issue if it is an allowed use for the Chairman.

A motion was made by Vice Chair Breton to grant variance relief for Case #14-2020: Parcel 17-L-140 from Section(s) 702 & Appendix A-1, to allow construction of a single-family dwelling and detached barn on a lot with 0' of frontage on a town road. Specifically, from Sec. 702 & Appendix A-1 to allow 900'+/- of frontage on a private road (Sawyer Road) where 175' is required on a public road per plan with a revision date of 12, 5, 2019 and to be conditioned that the barn not be used as a dwelling unit. Seconded by Mr. Shea. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms. Gogumalla, and Chairman Scholz- yes.

Vote 5-0. Motion passes.

The Chair advised of the 30-day appeal period.

Case #15-2019: Parcel 11-A-410

Applicant – Benchmark Engineering, Inc.

Owner – Mark E. Harvey

Location – 10 Haverhill Road

Zoning District – Rural District and Wetland & Watershed Protection District (WWPD)

Variance relief is requested from **Section(s) 601.1.1, 601.3, 601.4.6, 601.4.8.4.1, 702 & Appendix A-1**, to allow construction of a new single-family dwelling on a lot with a previously ZBA approval (06-2019) and a prior ZBA approval (16-2015). Specifically from **Sec. 601.1.1 and 601.3** to allow 700 sq. ft. of the new dwelling (where **1,050** sf was previously approved) of the dwelling to be located within the WWPD, where development of structures within the WWPD are not allowed. And from **Sec. 601.1.1** to allow the dwelling to be 65' from the edge of wetlands where 100' is required (and 60 feet was previously approved). And from **Sec. 601.3** to allow 3,500 sf of associated grading and improvements within the WWPD where such use is not permitted. And from **Sec. 601.4.6** to allow a septic system 70' from the edge of wetlands where 100' is required. And from **Sec. 601.4.8.4.1** to allow WWPD boundary markers to not be installed along the easterly WWPD line from approx. station 7+00 of the driveway to the stonewall at the rear of the lot, where markers be placed at 50' intervals is required. And from **Sec. 702 & Appendix A-1** to allow 0' frontage on a state road where 175' of frontage is required on a public town road.

Ms. Skinner read the case into the record.

A motion was made by Vice Chair Breton to continue Case #15-2020 July 14, 2020. Seconded by Ms. Gogumalla. Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms. Gogumalla, and Chairman Scholz- yes.

Vote 5-0.

Motion passes.

A motion was made by Ms. Gogumalla to adjourn at 10:44pm. Seconded by Ms. Skinner. **Roll call vote: Vice Chair Breton, Ms. Skinner, Mr. Shea, Ms. Gogumalla, and Chairman Scholz- yes. Vote 5-0. Motion passes.**

Respectfully submitted by Anitra Brodeur